

## DEPARTMENT OF THE TREASURY INTERNAL REVENUE SERVICE WASHINGTON, D.C. 20224

COSED

MENT EN Division

Date:

JUL 13 2001

Contact Person: Identification Number: Contact Number:

Employer Identification Number:

## Dear Applicant:

We have considered your application for recognition of exemption from federal income. tax under section 501(a) of the Internal Revenue Code as an organization described in section 501(c)(3). Based on the information submitted, we have concluded that you do not qualify for exemption under that section. The basis for our conclusion is set forth below.

You were incorporated in the state of Initially you were incorporated in asl You assert that you are a "spin-off" of a or-profit entity that was incorporated as subsequently changed your name to for-profit entity). The for-profit entity then changed its name to (the former name of the

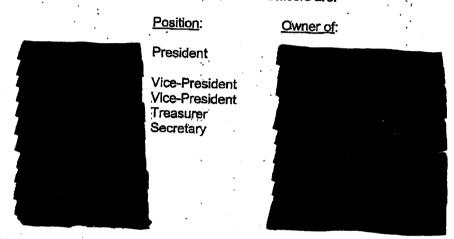
When the "spin-off" occurred, total assets transferred to you consisted of a depreciated mputer, printer, and fax machine. The for-profit entity of your vendor license agreements. It markets your organization by selling advertising, continues to hold all

Your primary philosophy and focus is hockey development for player's between the ages for advancement to Division I and III college hockey. The direct governing body of our league and all similar leagues within the country is

You promote players, coaches, officials and trainers for collegiate and professional rareers. You promote your program to scouts of the NCAA and Professional Hockey Leagues. ou state you are a developmental league for young athletes to learn and improve their skills for ture participation in college, professional, and Olympic programs.

The players are provided with exposure to both college and professional coaches. Talented players are provided opportunities to be selected by college drafts or the National Hockey League as professional players. The players maintain amateur status since they are not paid for their participation in the sport. They are helped to secure apartments if necessary and part-time or fulltime employment so they can pursue their sports goals. Travel and meal expenses are picked up for the players when they go on the road. Players must audition to play on a team.

Your league consists of fourteen team members. Twelve of the 14 team owners makeup your Board of Directors. Your Board of Directors and Officers are:



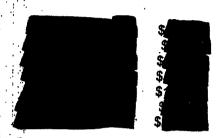
These individuals were also the owners/principal stockholders of the predecessor organization. You state that the income received from teams in the league is information not privy to the rest of the league, therefore not available.

Member	ship in your league may be obtained by a	any nerson of good conids, but an
	MAIO ISOUUCS IOI DIS CINNIET OF THE SHAR	Of ico hooks and the
were -	per team, plus \$ fan based on the	Membership fees for
		previous years attendance.

director. He owns and operates three junior hockey tearns, two of which play in your league. You state that he receives no compensation as President of your league nor

You intend to raise funds by initiation fees from new teams, assessments of the member teams and subsidies from You are a participating member of the governing body of all hockey within the United States. The subsidies, approximately to are based on the number of League hockey players who are drafted by the National Professional Hockey Leagues and the number of League hockey players that sign letter of intent to participate in Division I college hockey programs.

You state that assessments are a league charge to each team in the league. It is used to pay for the operations of the league. The assessments for each team in through were:





The Board of Directors of both your league and are made up of team owners of the team owners earn a profit from the operation of the team. Most of the teams are set up as for-profit entities. Only one is a non-profit entity.

You lease space for the commissioner's office and lease three apartments for the officials. The owners of the facilities have no relation to you in any way other than as landlord.

Section 501(c)(3) of the Internal Revenue Code exempts from federal income tax corporations organized and operated exclusively for, among others, charitable and educational purposes.

The requirement in section 501(c)(3) that an organization be organized and operated "exclusively" for exempt purposes has been recognized by the U.S. Supreme Court as meaning that the organization have its "primary" activity in the performance of exempt functions. Better <u>Susiness Bureau of Washington, D.C. v. U.S.</u>, 326 U.S. 279 (1945).

While the organizational test concerns the organization's articles of organization or comparable governing document, the operational test concerns the organization's activities. Reg. 1.501(c)(3)-1(b)(1)(iv). To meet the operational test, Reg. 1.501(c)(3)-1(d)(l)(ii) states that an organization must be engaged in activities furthering "public" purposes rather than private interests. It must not be operated for the benefit of designated individuals or the persons who

An organization satisfies the operational test if it operates exclusively for either of the following purposes: religious, charitable, scientific, testing for public safety, literary, educational, fostering national or international sports competition or prevention of cruelty to children or animals.

Section 501(j)(2) defines a "qualified amateur sports organization" as an organization and operated primarily to conduct or to support and develop amateur athletes for attional or international competition in sports.

An organization fosters national or international competition when:

- a. the athletes that the organization supports in the age group from which the athletes are normally chosen;
- b. the athletes are of a caliber that makes them serious contenders for Olympic or Pan-American games;

c. the athletes have to demonstrate a certain level of talent and achievement in

d. the organization provides intensive daily training, as opposed to sponsoring weekend events that are open to and attract a broad competitors. IRM 3.22.4

To meet the operational test, Reg. 1.501(c)(3)-1(d)(l)(ii) of the regulations states that an organization must be engaged in activities furthering "public" purposes rather than private interests. It must not be operated for the benefit of designated individuals or the persons who

In determining whether an organization is operated for a public benefit rather than a private benefit, a court may consider the size of the board of directors and their control of the organization. Western Catholic Church v. Comm., 73 T.C. 196 (1979).

In <u>Bubbling Well Church of Universal Love. Inc. v. Commissioner</u>, 74 T.C. 531 (1980) aff'd, 670 F.2d 104 (9th Cir. 1980), the Tax Court considered the qualification for exemption of an organization purporting to be a church. The applicant was controlled by three family

While this domination of petitioner by the three Harberts, alone may not necessarily disqualify it for exemption, it provides an obvious opportunity for abuse of the claimed tax-exempt status. It calls for open and candid disclosure of all facts bearing upon petitioner's organization, operations, and finances so that the Court, should it uphold the claimed exemption, can be assured that it is not sanctioning an abuse of the revenue laws. If such disclosure is not made, the logical inference is that the facts, if disclosed, would show that petitioner fails to meet the requirements of section 501(c)(3).

Thus, close control of an applicant, because of the potential for abuse, requires a clear demonstration that private interests will not be served.

You meet the organizational test. Your Articles of Incorporation state your purpose as to exclusively foster and promote national competition in amateur athletics through the stablishment of an amateur hockey league providing a stable, competitive atmosphere for the burpose not for pecuniary gain within the meaning of section 501(c)(3) of Code.

You fail the operational test. Although you otherwise qualify you are disqualified given that you excessively benefit private interests. Your league is comprised of 14 teams. Twelve of the team owners are on the Board of Directors. Five of the owners also serve as officers. Your control while collectively conducting business raises concern whether you are operated for exempt purposes. You must clearly establish that you are not operating for the benefit of ivate interests. Here you have failed to do so.

In P.L.L. Scholarship v. Commissioner, 82 T.C. (1984), an organization operated bingo

at a bar for the avowed purpose of raising money for scholarships. The board included the bar owners, the bar's accountant, also a director of the bar, as well as two players. The board was self-perpetuating. The Court reasoned that since the bar owners controlled the organization and appointed the organization's directors, the activities of the organization could be used to the was separate accounting and no payments were going to the bar. The Court was not

A realistic look at the operations of these two entities, however, shows that the activities of the taxpayer and the were so interrelated as to be functionally inseparable. Separate accountings of receipts and disbursements do not change that fact.

Fhe Court went on to conclude that the organization had a substantial nonexempt purpose.

Here, twelve of the 14 team owners make-up your Board of Directors and the (the for-profit entity). These individuals act as directors for you and directors for the for-profit entity all while managing their private interests in the ownership of their respective teams. This set-up makes it difficult to find the necessary delineation between you and the directors acting in their professional and private capacity.

Moreover, the for-profit entity continues to hold all of your vendor license agreements. It your marketing organization and sells advertising, merchandise, and media. You state in your application that you promote the league to fans and media via radio/ TV broadcasts, media guides, team programs, brochures and licensed merchandise. Your promotions benefit the for-profit entity and its directors. Given that you and the for-profit entity have the same directors, you are, as a result, benefiting your own directors. Your operations serve private interests even directors or directors may not be compensated for their services as officers or directors. A realistic look at your operations and shows the activities to be so meternal ated as to be functionally inseparable.

You have stated the difference between your league and a for-profit league, such as the sational Hockey League (NHL), is that yours is a developmental league for young athletes to improve their skills with the objective of receiving a scholarship for college hockey. Whereas the NHL is a professional league in which players are paid to play and it is their job to play. The distinction you provide may be correct as to players. However, there is one similarity that cannot be overlooked and that is that both you and the NHL are associations of for-profit businesses designed to promote your individual common business interests. Even though the players in your league are amateurs, the league does not substantially differ from a professional sports league. Your purpose to promote players for collegiate, professional, and even, Olympic competition is incidental to the private interests of your owners and Board members.

Accordingly, you do not qualify for exemption as an organization described in section 501(c)(3) of the Code and you must file federal income tax returns.

Contributions to you are not deductible under section 170 of the Code.

You have the right to protest this ruling if you believe it is incorrect. To protest, you should submit a statement of your views to this office, with a full explanation of your reasoning. This statement, signed by one of your officers, must be submitted within 30 days from the date of this letter. You also have a right to a conference in this office after your statement is submitted. You must request the conference, if you want one, when you file your protest statement. If you proper power of attorney and otherwise qualify under our Conference and Practices.

If you do not protest this ruling in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Code provides, in part, that a declaratory judgement or decree under this section shall not be issued in any proceeding unless the Tax Court, the United States Court of Federal Claims, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service.

If we do not hear from you within 30 days, this ruling will become final and a copy will be forwarded to the Ohio Tax Exempt and Government Entities (TE/GE) office. Thereafter, any questions about your federal income tax status should be directed to that office, either by calling 877-829-5500 (a toll free number) or sending correspondence to: Internal Revenue Service, TE/GE Customer Service, P.O. Box 2508, Cincinnati, OH 45201. The appropriate State Officials will be notified of this action in accordance with Code section 6104(c).

When sending additional letters to us with respect to this case, you will expedite their escelpt by using the following address:

Internal Revenue Service T:EO:RA:T:4 1111 Constitution Ave, N.W. Washington, D.C. 20224

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

(signed) Gerald V. Sack

Gerald V. Sack Manager, Exempt Organizations Technical Group 4

